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18  
19  
20      **UNITED STATES DISTRICT COURT**  
21      **DISTRICT OF NEVADA**

22  
23      JOHN NATIVIDAD, individually  
24      and on behalf of all others similarly  
25      situated,

26           Plaintiff,

27      vs.  
28      NEVADA HOLISTIC MEDICINE  
29      LLC

30           Defendant.

31      Case No.

32      **CLASS ACTION**

33  
34      **COMPLAINT FOR**  
35      **VIOLATIONS OF THE**  
36      **TELEPHONE CONSUMER**  
37      **PROTECTION ACT, 47 U.S.C. §§**  
38      **227, ET SEQ. (TCPA)**

39  
40      **JURY TRIAL DEMANDED**

## **CLASS ACTION COMPLAINT**

1. Plaintiff, John Natividad, brings this action against Defendant, Nevada Holistic Medicine LLC., to secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

## **NATURE OF THE ACTION**

2. This is a putative class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

3. Defendant markets and sells cannabis products that it grows indoors.<sup>1,2</sup>

4. To promote its goods and services, Defendant engages in telephonic sales calls using text messages and ignores requests that it stop.

5. Through this action, Plaintiff seeks injunctive relief to halt Defendant's illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of Plaintiff and members of the Class, and any other available legal or equitable remedies.

## **JURISDICTION AND VENUE**

6. This Court has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

7. The Court has personal jurisdiction over Defendant and venue is proper in this District because Defendant directs, markets, and provides its business activities to this District, and because Defendant's unauthorized marketing scheme was directed by Defendant to consumers in this District, including Plaintiff.

## PARTIES

<sup>1</sup> [vegastreehouse.com/order](http://vegastreehouse.com/order)

<sup>2</sup> <https://www.globenewswire.com/en/news-release/2021/06/24/2252474/0/en/Agrify-Expands-Relationship-with-Current-Customer-Nevada-Holistic-Medicine-Further-Increases-Presence-in-Attractive-Nevada-Market.html>

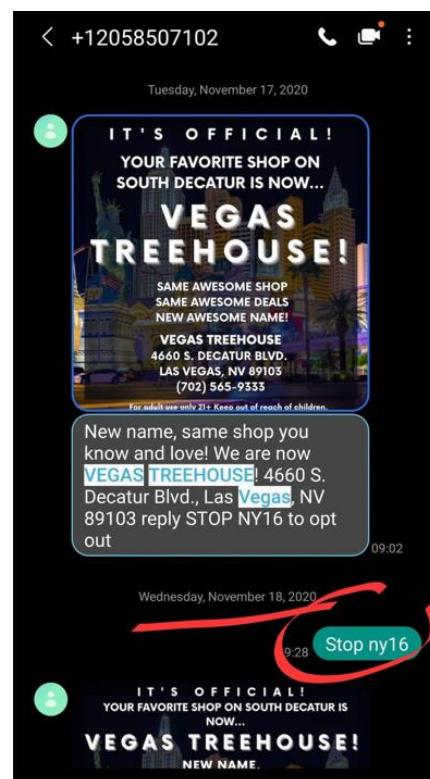
1       8. Plaintiff is a natural person who, at all times relevant to this action, was  
 2 a resident of Las Vegas, Nevada

3       9. Defendant is a Nevada corporation whose principal office is located at  
 4 4660 S Decatur Blvd, Las Vegas NV 89103. Defendant directs, markets, and  
 5 provides its business activities throughout the United States, including throughout  
 6 the state of Nevada.

7       10. Unless otherwise indicated, the use of Defendant's name in this  
 8 Complaint includes all agents, employees, officers, members, directors, heirs,  
 9 successors, assigns, principals, trustees, sureties, subrogees, representatives,  
 10 vendors, and insurers of Defendant.

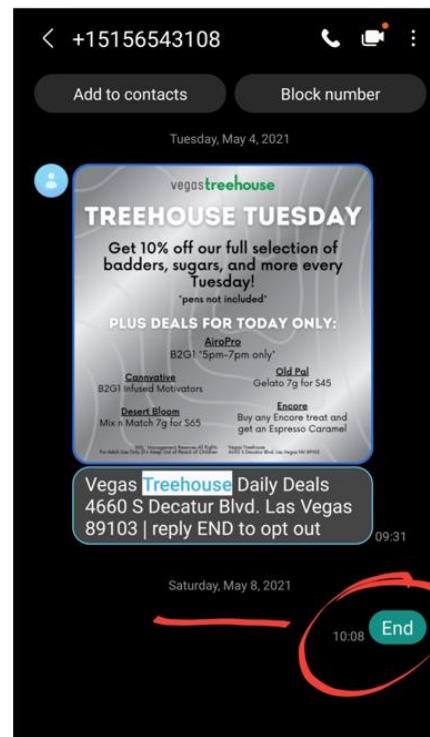
## FACTS

11      11. On November 17, 2020, Defendant caused the following text message  
 12 to be transmitted to Plaintiff's cellular telephone number ending in 9505 ("9505  
 13 Number") from the telephone number 205-850-7102:



1           12. On November 18, 2021, Plaintiff responded “Stop ny16” in order to  
 2 stop Defendant from continuing to send him text messages.

3           13. On May 4, 2021, Defendant caused another text message to be  
 4 transmitted to the 9505 Number from the telephone number 515-654-3108:



14           14. On May 8, 2021, Plaintiff responded “End” in order to stop Defendant  
 15 from continuing to send him text messages.

16           15. Despite Plaintiff’s requests that it cease sending him messages,  
 17 Defendant sent Plaintiff the following text messages from a different number (530-  
 18 451-1575) on June 20, 2021, June 21, 2021, June 22, 2021 and June 24, 2021:  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1 < +15304511575  
Sunday, June 20, 2021

2 2 Hi John! There's an important  
3 notification from Vegas  
4 Treehouse >> <https://usalasmj.com/gUEaGCBOlZje> reply END  
5 to opt out 09:46

6 Monday, June 21, 2021

7 6 Hi John, it's a big week with  
8 new updates from Vegas  
9 Treehouse: <https://usalasmj.com/gUEaHPCsE6lf> reply END  
10 to opt out 09:31

11 Tuesday, June 22, 2021

12 10 Hey John! Don't forget to see  
13 the latest update from Vegas  
14 Treehouse: <https://usalasmj.com/gUENB3jJz9Db> reply END  
15 to opt out 09:36

16 Thursday, June 24, 2021

17 11 Hi John! Vegas Treehouse  
18 has what you've been waiting  
19 for <https://usalasmj.com/gUFZFCJWnI52> reply END to  
20 opt out 09:31

16. The purpose of these text messages is to promote and market Defendant's products, goods and or services.

17. At the time Plaintiff received these text messages Plaintiff was the subscriber and/or sole user of the 9505 Number.

18. Plaintiff received the subject text messages within this judicial district and, therefore, Defendant's violation of the TCPA occurred within this district.

19. Upon information and belief, Defendant caused similar text messages to be sent to individuals residing within this judicial district.

20. Plaintiff never gave Defendant consent to send him marketing text messages and any consent Defendant may claim to have had was revoked by Plaintiff when he requested that Defendant stop sending him text messages.

21. Defendant failed to honor or abide by Plaintiff's opt-out request and continued to repeatedly text message Plaintiff after he asked for the messages to stop.

22. Defendant sent Plaintiff no less than five (5) text message solicitations after Plaintiff's initial stop request on November 18, 2020.

23. Defendant's failure to abide by Plaintiff's opt-out requests is indicative of Defendant's lack of a written policy for maintaining internal do not call procedures.

24. Defendant's failure to abide by Plaintiff's opt-out requests is indicative of Defendant's failure to institute procedures for maintaining a list of persons who request not to receive telemarketing calls.

25. Defendant's failure to abide by Plaintiff's opt-out requests is indicative of Defendant's failure to maintain an internal do not call list, as well as inform and train its personnel engaged in telemarketing in the existence and the use of any internal do not call list.

26. Defendant's failure to abide by Plaintiff's opt-out requests demonstrates that Defendant does not record opt-out requests or place subscribers' names and telephone number on any do-not-call list at the time the requests are made.

27. Defendant's unsolicited calls caused Plaintiff to suffer injuries including annoyance and disruption to his daily life, as well as violation of Plaintiff's legal rights under the TCPA.

## **CLASS ALLEGATIONS**

## PROPOSED CLASS

28. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of himself and all others similarly situated.

29. Plaintiff brings this case on behalf of the Class defined as follows:

1  
**Internal Do Not Call Class:** All persons within the United States who,  
 2 within the four years prior to the filing of this Complaint, (1) were sent a text  
 3 message from Defendant or anyone on Defendant's behalf, (2) promoting  
 4 Defendant's products, goods or services, (3) to said person's residential  
 5 telephone number, (4) after making a request to Defendant to not receive  
 6 future text messages, including, but not limited to, by replying "end" or  
 "stop ny16" to Defendant's text messages.

7 30. Plaintiff reserves the right to modify the Class definitions as warranted  
 as facts are learned in further investigation and discovery.

8 31. Defendant and its employees or agents are excluded from the Class.  
 9 Plaintiff does not know the number of members in the Class but believes the Class  
 10 members number in the several thousands, if not more.

11 **NUMEROUSITY**

12 32. Upon information and belief, Defendant has placed calls to cellular  
 13 telephone numbers belonging to thousands of consumers. The members of the Class,  
 14 therefore, are believed to be so numerous that joinder of all members is  
 15 impracticable.

16 33. The exact number and identities of the Class members are unknown at  
 17 this time and can be ascertained only through discovery. Identification of the Class  
 18 members is a matter capable of ministerial determination from Defendant's call  
 19 records, which contains the date, time, content, and recipient of each of Defendant's  
 20 text message solicitations, as well as inbound messages like Plaintiff's "end"

21 **COMMON QUESTIONS OF LAW AND FACT**

22 34. There are numerous questions of law and fact common to members of  
 23 the Class which predominate over any questions affecting only individual members  
 24 of the Class. Among the questions of law and fact common to the members of the  
 25 Class are: [1] Whether Defendant initiated telemarketing calls to telephone numbers;  
 26 [2] Whether Defendant continued to text message individuals after they requested

1 for the messages to stop; [3] Whether Defendant failed to properly maintain and  
2 internal do not call list and procedures; [4] Whether Defendant's conduct was  
3 knowing and willful; [5] Whether Defendant is liable for damages, and the amount  
4 of such damages; and [6] Whether Defendant should be enjoined from such conduct  
5 in the future.

6       35. The common questions in this case are capable of having common  
7 answers. If Plaintiff's claim that Defendant routinely transmits unsolicited text  
8 messages to telephone is accurate, Plaintiff and the Class members will have  
9 identical claims capable of being efficiently adjudicated and administered in this  
10 case.

11                     **TYPICALITY**

12       36. Plaintiff's claims are typical of the claims of the Class members, as  
13 they are all based on the same factual and legal theories.

14                     **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

15       37. Plaintiff is a representative who will fully and adequately assert and  
16 protect the interests of the Class, and has retained competent counsel. Accordingly,  
17 Plaintiff is an adequate representative and will fairly and adequately protect the  
18 interests of the Class.

19                     **PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE**

20       38. A class action is superior to all other available methods for the fair and  
21 efficient adjudication of this lawsuit, because individual litigation of the claims of  
22 all members of the Class is economically unfeasible and procedurally impracticable.  
23 While the aggregate damages sustained by the Class are in the millions of dollars,  
24 the individual damages incurred by each member of the Class resulting from  
25 Defendant's wrongful conduct are too small to warrant the expense of individual  
26 lawsuits. The likelihood of individual Class members prosecuting their own separate  
27  
28

claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

39. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

## COUNT I

**VIOLATION OF 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(d)**  
**(On Behalf of Plaintiff and the Internal Do Not Call Class)**

40. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

41. In pertinent part, 47 C.F.R. § 64.1200(d) provides:

No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) ***Written policy.*** Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

**(2) Training of personnel engaged in telemarketing.** Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

1           42. Under 47 C.F.R. § 64.1200(e), the rules set forth in 47 C.F.R. §  
2 64.1200(d) are applicable to any person or entity making telephone solicitations or  
3 telemarketing calls to wireless telephone numbers.

4           43. Plaintiff and the Internal Do Not Call Class members made requests to  
5 Defendant not to receive calls from Defendant.

6           44. Defendant failed to honor Plaintiff and the Internal Do Not Call Class  
7 members opt-out requests.

8           45. Defendant's refusal to honor opt-out requests is indicative of  
9 Defendant's failure to implement a written policy for maintaining a do-not-call list  
10 and to train its personnel engaged in telemarketing on the existence and use of the  
11 do-not-call-list.

12           46. Thus, Defendant has violated 47 C.F.R. § 64.1200(d).

13           47. Pursuant to section 227(c)(5) of the TCPA, Plaintiff and the Internal Do  
14 Not Call Class members are entitled to an award of \$500.00 in statutory damages,  
15 for each and every negligent violation.

16           48. As a result of Defendant's knowing or willful conduct, Plaintiff and the  
17 Internal Do Not Call Class members are entitled to an award of \$1,500.00 in  
18 statutory damages per violation.

19           49. Plaintiff and the Internal Do Not Call Class members are also entitled  
20 to and seek injunctive relief prohibiting Defendant's illegal conduct in the future,  
21 pursuant to section 227(c)(5).

22           **PRAYER FOR RELIEF**

23           **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for  
24 the following relief:

25           a) An order certifying this case as a class action on behalf of the Class as  
26 defined above, and appointing Plaintiff as the representative of the  
27 Class and Plaintiff's counsel as Class Counsel;

1                   b) An award of actual and statutory damages for Plaintiff and each  
2                   member of the Class;

3                   c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et*  
4                   *seq.*, and its implementing regulations, Plaintiff seeks for Plaintiff and  
5                   each member of the Class \$500.00 in statutory damages for each and  
6                   every violation pursuant to 47 U.S.C. §§ 227.

7                   d) As a result of Defendant's knowing and/or willful violations of 47  
8                   U.S.C. §§ 227, *et seq.*, and its implementing regulations, Plaintiff seeks  
9                   for Plaintiff and each member of the Classes treble damages, as  
10                  provided by statute, up to \$1,500.00 for each and every violation  
11                  pursuant to 47 U.S.C. § 277(b)(3)(B) and § 277(b)(3)(C);

12                  e) An order declaring that Defendant's actions, as set out above, violate  
13                  the TCPA and its implementing regulations;

14                  f) An injunction requiring Defendant to cease all unsolicited text  
15                  messaging activity, and to otherwise protect the interests of the Classes;

16                  g) An injunction requiring Defendant to cease all text messaging activity  
17                  to individuals who have requested to be removed from Defendant's  
18                  contact list;

19                  h) A declaration that Defendant's practices described herein violate 47  
20                  C.F.R. § 64.1200(a)(1)(iii);

21                  i) A declaration that Defendant's violations of 47 C.F.R. §  
22                  64.1200(a)(1)(iii) were willful and knowing; and

23                  j) Such further and other relief as the Court deems necessary.

24                   **JURY DEMAND**

25                  Plaintiff hereby demand a trial by jury.

26                   **DOCUMENT PRESERVATION DEMAND**

1 Plaintiff demands that Defendant take affirmative steps to preserve all records,  
2 lists, electronic databases or other itemization of telephone numbers associated with  
3 Defendant and the calls as alleged herein.

4  
5 Respectfully submitted,

6  
7 Dated: September 20, 2021

8 **HIRALDO P.A.**

9  
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